

## **REMARKS/ARGUMENTS**

Applicant respectfully requests reconsideration of this application in view of the above amendments and the following remarks.

### **1. Status of the Claims**

Claims 1-24 are pending in this application.

Claims 1, 14, 18 and 20 have been amended to clarify the claimed subject matter, particularly with respect to structural features and elements of the pouring device and its use.

Support for these amendments is found in the original specification at, for example:

Page 8, lines 7-9

Figure 5

No new matter has been added.

### **2. § 112 Rejection**

Applicant respectfully traverses the rejection under § 112 on the basis of an apparent double inclusion. Applicant disagrees with the Examiner's argument that claim 1 requires that the dispensing and pour opening be sealed by a cap. The limitation "adapted to permit sealing . . . by a cap" merely delimits the structure of the upper portion, and does not require that a cap actually be included in the pouring device. Claim 14 has been amended to positively recite an attached cap since "cap" was not positively recited in claim 1 and thus "cap" in claim 14 is not a double inclusion. Accordingly, Applicant respectfully traverses the Examiner's requirement of appropriate correction and this rejection should be withdrawn.

**3. § 102/103 Rejections**

**a) 102(b) Rejections over Miller**

Claims 1-7, 14-16, 20, 21, 22 and 24 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 3,762,612 to Miller ("Miller").

Applicant respectfully submits that Miller fails to disclose or suggest all the elements of any of the foregoing claims, for at least the reasons that follow.

Miller fails to disclose or suggest a pouring device as presently claimed, comprising a plurality of apertures forming a pour opening extending across substantially an entire substantially circular cross section of a cylindrical body. Applicant respectfully disagrees with the Examiner's assertion that apertures 29 of Miller extend across substantially an entire circular cross section of a cylindrical body - referring to Figures 1 and 3 of Miller, it is clear that apertures 29 do not extend across even half of a circular cross section of tube 18. Miller also fails to disclose or suggest a pouring device having an air passageway disposed adjacent to the internal periphery of a lower portion of a cylindrical body and extending in a direction along the internal periphery of the cylindrical body, as required by amended claims 1, 18 and 20. To the contrary, vent tube 24 is "axially disposed" with respect to pourout fitment 10, Col. 2, Ins. 57-58, clearly meaning aligned with the axis in the center of pourout fitment 10, in view of Figures 1 and 3.

Miller also fails to disclose or suggest a visual indicator for identifying the position of an air passageway with respect to the visual indicator. In paragraph 4 of the Office Action, the Examiner refers to element 20 as a "visual indicator." Element 20 is not a visual indicator, but rather the flared upper extremity of the pouring tube 18, see col. 2, Ins. 54-56, which extends fully around the tube, and thus does not identify the position of anything. The Examiner apparently recognizes that element 20 is not a visual indicator in another part of the Office Action, at paragraph 8, stating, "Miller shows all claimed features . . . except for a visual indicator for verification of the relative position of the passage."

Furthermore, Miller fails to disclose or suggest a pouring device having a cylindrical body extending above and surrounding uniformly disposed apertures and an air passageway. Instead, Miller discloses a vent tube 24 extending above all other elements of pourout fitment 10, including pouring tube 18. Therefore, by at least failing to disclose or suggest any of the foregoing elements, Miller fails to anticipate (or render obvious) any of the rejected claims.

In response to the newly stated rejection of claims 14-16 as considered to be anticipated by Miller, the Examiner has not, and indeed could not have, identified disclosure in Miller of an attached cap according to claim 14 or a circumferential sealing groove on one of the according to claims 15 and 16. Miller does not disclose an attached cap, but rather a separate closure 30, which is not integrally attached to pourout fitment 10. See, e.g., Figs. 2, 4-7; col. 3, Ins. 8 et seq. In fact, contrary to the Examiner's assertion, closure 30 does not even threadably attach to the cylindrical body of a pouring device for use with a bottle; rather, threads 60 are for engagement with corresponding threads on a container itself. Col. 4, Ins. 6-9; See *also* col. 3, Ins. 33-35. Miller also fails to disclose a groove complementary to annular sealing bead 66 as required by claims 15 and 16. The Examiner has not, and indeed could not have, identified such a groove as disclosed by Miller.

For at least the foregoing reasons, Miller does not anticipate or render obvious any of the rejected claims.

b) 103(a) rejections over Miller in view of Baxter

Claims 8-11 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of U.S. Patent No. 4,128,189 to Baxter ("Baxter").

Applicant respectfully submits that neither Miller nor Baxter discloses or provides a reason for creating a pouring device according to any of the rejected claims, for at least the following reasons.

Baxter, like Miller, also fails to disclose a pouring device as presently claimed in independent claim 1, having a cylindrical body extending above and surrounding a plurality of uniformly disposed apertures and an air passageway. Applicant notes that the Examiner apparently overlooked the seventh limitation clause of claim 1, instead only focusing on the third clause, in stating that Applicant relied on features not recited in the rejected claims. The seventh clause recites "the cylindrical body extending above and surrounding the uniformly disposed apertures and the air passageway." To the contrary, Baxter shows a cylindrical portion 56 that terminates below a pouring spout 64 having only a single opening. Thus, the combination of Baxter and Miller fails to disclose a pouring device according to any of claims 8-11.

Moreover, neither Baxter nor Miller discloses a pouring device having a visual indicator comprising an indentation according to claim 8. Regarding claim 9, Applicant respectfully asserts that Baxter column 3, lines 50-53 fails to disclose a visual indicator disposed on an outer surface of an upper portion of a cylindrical body for identifying the relative location of an air passageway with respect to the visual indicator, wherein the visual indicator comprises a marking having a color different from the color of said cylindrical body, but rather discloses that the insert 50, cover 70 and cap 74 can be variously colored in order to harmonize with the color style of a container. Insert 50, cover 70 and cap 74 are all members that extend 360° around the axis of the disclosed device, see Figure 3, and therefore variously coloring them would not identify the relative location of an air passageway extending in a direction along the internal periphery of a cylindrical body. Thus, the cited passage does not disclose or provide a reason for a marking according to claim 9.

For at least the foregoing reasons, none of claims 8-11 is obvious over Miller in view of Baxter.

c) 103(a) Rejections over Miller in view of Pham

Claims 12, 13 and 17 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of U.S. Patent No. 5,228,603 to Pham et al. ("Pham").

The reasons set forth in a) are applicable here, as Pham fails to supply the deficiencies of Miller. In particular, Pham fails to teach or suggest a pouring device as presently claimed, namely, a pouring device comprised of a cylindrical body with an upper cylindrical portion having a substantially circular interior cross-sectional shape, the cylindrical body extending above and surrounding uniformly dispersed apertures and an air passageway to permit sealing the liquid in the bottle from the atmosphere by a cap insertable into the interior of the upper portion to close both the apertures and the air passageway to the atmosphere, the apertures defining a pour opening extending substantially across an entire substantially circular cross section of the cylindrical body. Although Pham discloses a filter, Pham fails to disclose or provide a reason for a filter extending across a pour opening as required by claim 12, where all claims require that the pour opening extend across substantially an entire substantially circular cross section. For each of these reasons, Miller in view of Pham fails to render any claim obvious.

Thus, for at least the foregoing reasons, current claims 12-17 are not obvious over Miller in view of Pham, and this rejection should be withdrawn.

d) 103(a) Rejections over Miller in View of Beall

Claims 18, 19 and 23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of U.S. Patent No. 2,812,113 to Beall ("Beall").

Applicant respectfully submits that Beall fails to supply the deficiencies of Miller with respect to all claims. In particular, the combination of Miller and Beall fails to disclose or provide a reason for a pouring device as presently claimed, namely, a pouring device comprised of a cylindrical body with an upper cylindrical portion having a substantially circular interior cross-sectional shape,


the cylindrical body extending above and surrounding uniformly dispersed apertures and an air passageway to permit sealing the liquid in the bottle from the atmosphere by a cap insertable into the interior of the upper portion to close both the apertures and the air passageway to the atmosphere, the apertures defining a pour opening extending substantially across an entire substantially circular cross section of the cylindrical body.

Moreover, neither Miller nor Beall provides a reason to modify the device of Miller to include a visual indicator that identifies the position of an air passageway with respect to the visual indicator. Again, it should be noted that vent tube 24 of Miller is "axially disposed," and thus its position is the same no matter which way the device of Miller is faced for pouring. See Miller, col. 2, lns. 57-58; Figs. 1, 3.

### CONCLUSION

In view of the foregoing, no single reference or combination of the cited references teaches, suggests or otherwise renders obvious, whether alone or in combination, the subject matter of claims 1-24. Applicant respectfully submits that all of the rejections have thus been overcome and claims 1-24, as amended, are in condition for allowance. Accordingly, an early indication of allowance is solicited.

Respectfully submitted,

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